IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10191 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESH MAVJIBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DUTTA for MR AR SHAIKH for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 06.05.2003 passed by the Police Commissioner, Rajkot City, against

him, in exercise of powers under Section 3(1) of 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 06.5.2003.

2. The grounds served upon the petitioner and placed on record suggest that the detaining authority took into consideration two aspects. Firstly, registration of crimes, six in number, against the petitioner on 12.1.2002, 14.9.2002, 1.2.2003 and 27.4.2003 under Sections 457 and 380 of the IPC, wherein some cash and ornaments of gold alleged to have been recovered from the petitioner. In addition to this, the detaining authority also took into consideration two in-camera statements recorded by the proposing authority on 4.5.2003 and verified by the detaining authority on 5.5.2003 revealing incidents of 12.1.2003 and 23.11.2002. From the above material, the impugned order came to be passed.

3. Learned Advocate Ms.Banna Dutta for Mr. A.R. Shaikh for the petitioner and learned AGP Mr. R.M. Chauhan for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of on the ground that whether the detaining authority has applied its mind to the vital aspect of the matter. The grounds of the detention as placed on record reveals that out of four offences registered against the petitioner, the petitioner was released on bail in three offences while in the fourth offence, he was under judicial custody when the order came to be passed against him. Learned Advocate for the petitioner makes a statement that in this offence, the petitioner is still in judicial custody and has not moved any application for bail. Since the petitioner was in judicial custody in fourth offence and had not filed any bail application, there was no apprehension that the petitioner was likely to be released on bail and was likely to be indulged in illegal activities. The detaining authority has not taken into consideration this aspect while passing the order. Thus, the order impugned in this Special Civil Application is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Application passed by the Police Commissioner,

Rajkot City, on 06.5.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair